

1 THE HONORABLE JAMES L. ROBART  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 CYWEE GROUP LTD.,

11 Plaintiffs,

v.

12 HTC CORPORATION; and HTC AMERICA,  
13 INC.,

14 Defendants.

CASE NO.: 2:17-cv-00932-JLR

**DEFENDANTS' MOTION TO  
DISMISS PURSUANT TO RULE  
12(b)(6)**

NOTE ON MOTION CALENDAR:  
November 17, 2017

JURY DEMAND

1 Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendants HTC  
 2 Corporation and HTC America, Inc. (together, “HTC” or “Defendants”), respectfully move to  
 3 dismiss plaintiff CyWee Group Ltd.’s (“CyWee” or “Plaintiff”) claims for induced infringement  
 4 under 35 U.S.C. § 271(b) for failure to state a claim, and respectfully submits this memorandum  
 5 in support of said motion.

6 **I. INTRODUCTION**

7 CyWee’s Amended Complaint fails to meet the Supreme Court’s heightened pleading  
 8 standards, which reject allegations—like those pled by CyWee—that are mere “conclusion[s]  
 9 couched in factual allegations.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell*  
 10 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). Dismissing CyWee’s inducement claims is  
 11 not only necessary in light of the Supreme Court’s directives, but will also conserve judicial and  
 12 party resources by eliminating claims and focusing the dispute on relevant facts and issues.

13 CyWee alleges no facts that plausibly show that HTC took affirmative steps – at any time  
 14 – to cause others to infringe U.S. Patent No. 8,441,438 (“the ’438 Patent”) and U.S. Patent No.  
 15 8,552,978 (“the ’978 Patent”) (together, “the Patents-in-Suit”). Nor does CyWee plead facts  
 16 sufficient to plausibly show that HTC – at any time – specifically intended others to infringe the  
 17 Patents-in-Suit. Nor does CyWee plead facts sufficient to plausibly show that HTC knew – at  
 18 any time – that its end users or customers were infringing. These pleading failures mandate  
 19 dismissal of all claims for indirect and induced infringement. Accordingly, HTC respectfully  
 20 requests that the Court dismiss all claims of induced infringement under 35 U.S.C. § 271(b).

21 **II. ALLEGATIONS OF THE AMENDED COMPLAINT**

22 CyWee asserts two claims in its Amended Complaint: Patent Infringement of U.S. Patent  
 23 No. 8,441,438 and Patent Infringement of U.S. Patent No. 8,552,978. CyWee alleges that it is  
 24 the owner of all right, title, and interest in and to the ’438 Patent and the ’978 Patent. Dkt. No.  
 25 20 at pp. 6, 15 (Am. Compl. ¶¶ 21, 119). With each claim of patent infringement, CyWee makes  
 26 only the following allegations regarding indirect and induced infringement:

1       28. On information and belief, HTC indirectly infringes the '438 Patent by  
 2       inducing others to infringe one or more claims of the '438 Patent through sale  
 3       and/or use of the '438 Accused Products. On information and belief, at least as a  
 4       result of the filing of this action, HTC is aware of the '438 Patent; is aware that its  
 5       actions with regards to distributors, resellers, and/or end users of the '438  
 6       Accused Products would induce infringement; and despite such awareness will  
 7       continue to take active steps—such as, creating and disseminating the '438  
 8       Accused Products, and product manuals, instructions, promotional and marketing  
 9       materials, and/or technical materials to distributors, resellers, and end users—  
 10      encouraging other's infringement of the '438 Patent with the specific intent to  
 11      induce such infringement.

12      ...

13       126. On information and belief, HTC indirectly infringes the '978 Patent by  
 14       inducing others to infringe one or more claims of the '978 Patent through sale  
 15       and/or use of the '978 Accused Products. On information and belief, at least as a  
 16       result of the filing of this action, HTC is aware of the '978 Patent; is aware that its  
 17       actions with regards to distributors, resellers, and/or end users of the '978  
 18       Accused Products would induce infringement; and despite such awareness will  
 19       continue to take active steps—such as, creating and disseminating the '978  
 20       Accused Products, and product manuals, instructions, promotional and marketing  
 21       materials, and/or technical materials to distributors, resellers, and end users—  
 22       encouraging other's infringement of the '978 Patent with the specific intent to  
 23       induce such infringement.

24       Dkt. No. 20 at pp. 8-9, 18 (Am. Compl. ¶¶ 28, 126). Because these allegations are mere  
 25       “conclusions couched in factual allegations,” HTC respectfully requests that the Court dismiss  
 26       all claims of inducement to infringe under 35 U.S.C § 271(b). *See Iqbal*, 556 U.S. at 678  
 27       (quoting *Twombly*, 550 U.S. at 555).

### 28       **III.    LEGAL STANDARDS**

29       To survive a Rule 12(b)(6) challenge, CyWee's Amended Complaint must allege  
 30       “sufficient facts to state a claim for relief which is ‘plausible on its face.’” *Milo & Gabby, LLC*  
 31       *v. Amazon.com*, 12 F. Supp. 3d 1341, 1345 (W.D. Wash. 2014) (quoting *Iqbal*, 556 U.S. at 678);  
 32       *see also Sharafabadi v. Pac. Nw. Farmers Coop.*, No. C09-1043-JLR, 2010 U.S. Dist. LEXIS  
 33       2936, at \*4 (W.D. Wash. Jan. 14, 2010) (Robart, J.) (same). It is not enough for a complaint to  
 34       “plead[] facts that are ‘merely consistent with’ a defendant’s liability.” *Iqbal*, 556 U.S. at 678  
 35       (quoting *Twombly*, 550 U.S. at 557). Instead, “[a] claim has facial plausibility when the plaintiff  
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1 pleads factual content that allows the court to draw the reasonable inference that the defendant is  
 2 liable for the misconduct alleged.” *Id.* at 679 (citing *Twombly*, 550 U.S. at 556).

3 While the Court must accept all of the well-pled factual allegations in the complaint as  
 4 true, the Court is not required to accept as true a legal conclusion presented as a factual  
 5 allegation. *Sharafabadi*, 2010 U.S. Dist. LEXIS 2936, at \*4-5 (citing *Iqbal*, 556 U.S. at 678).  
 6 “Threadbare recitals of the elements of a cause of action, supported by mere conclusory  
 7 statements, do not suffice.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 555). Legal  
 8 conclusions may “provide the framework of a complaint,” but they “must be supported by  
 9 factual allegations.” *Id.* at 679. The Court must dismiss claims totally devoid of factual  
 10 allegations because they do not “raise a right to relief above the speculative level.” *Twombly*,  
 11 550 U.S. at 555-56.

12 **IV. PLAINTIFF FAILS TO STATE A CLAIM FOR INDIRECT INFRINGEMENT**

13 CyWee’s Amended Complaint fails to state a claim for indirect and induced infringement  
 14 and, therefore, these claims should be dismissed. Title 35 U.S.C. § 271(b), which governs  
 15 induced infringement, provides that “[w]hoever actively induces infringement of a patent shall  
 16 be liable as an infringer.” 35 U.S.C. § 271(b). The Supreme Court has identified three necessary  
 17 elements for induced infringement which must be pled in accordance with *Twombly* and *Iqbal*.  
 18 See *In re Bill of Lading Transmission and Processing Sys. Patent Litig.*, 681 F.3d 1323, 1336-37  
 19 (Fed. Cir. 2012) (claims of indirect infringement must be pled under the standard of *Twombly*  
 20 and *Iqbal*). First, “inducement must involve *the taking of affirmative steps* to bring about the  
 21 desired result.” *Global-Tech. Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 760 (2011) (emphasis  
 22 added). Second, inducement “requires knowledge that the induced acts constitute patent  
 23 infringement.” *Id.* at 766 (emphasis added); *see also Milo & Gabby*, 12 F. Supp. 3d at 1353  
 24 (same) (quoting *Global-Tech.*, 131 S. Ct. at 2068); *Warner-Lambert Co. v. Apotex Corp.*, 316  
 25 F.3d 1348, 1364 (Fed. Cir. 2003) (“mere knowledge of *possible* infringement by others does not  
 26 amount to inducement; specific intent and action to induce infringement must be proven.”)  
 27

1 (emphasis added). In other words, “[i]nducement requires a showing that the alleged inducer  
 2 knew of the patent, knowingly induced the infringing acts, and possessed a specific intent to  
 3 encourage another’s infringement of the patent.” *Kremerman v. Open Source Steel, LLC*, No.  
 4 C17-953-BAT, 2017 U.S. Dist. LEXIS 145960 at \*5 (W.D. Wash. Sep. 8, 2017) (Tsuchida,  
 5 Mag. J.) (quoting *Vita-Mix Corp. v. Basic Holding, Inc.*, 581 F.3d 1317, 1328 (Fed. Cir. 2009)).  
 6 Third, liability under § 271(b) also requires that some other party commits direct infringement.  
 7 *Limelight Networks, Inc. v. Akamai Techs., Inc.*, 134 S. Ct. 2111, 2117 (2014); *In re Bill of*  
 8 *Lading*, 681 F.3d at 1333-36. Accordingly, to properly plead induced infringement, CyWee’s  
 9 Amended Complaint must “contain facts plausibly showing that [HTC] specifically intended [its]  
 10 customers to infringe the [Patents-in-Suit] and knew that the customer[s’] acts constituted  
 11 infringement.” *In re Bill of Lading*, 681 F.3d at 1339. That is, “[i]nducement requires evidence  
 12 of culpable conduct, directed to encouraging another’s infringement, not merely that the inducer  
 13 had knowledge of the direct infringer’s activities.” *DSU Med Corp. v. JMS Co., Ltd.*, 471 F.3d  
 14 1293, 1306 (Fed. Cir. 2006) (citations omitted). CyWee has failed to plead facts sufficient to  
 15 state a claim for induced infringement under these governing standards.

16 As to the Supreme Court’s first element for induced infringement, CyWee alleges no facts  
 17 that plausibly show that HTC took “affirmative steps” to cause its end users or customers to infringe  
 18 the Patents-in-Suit. *Global-Tech*, 563 U.S. at 760. Instead, CyWee makes the generic allegation  
 19 that HTC “[took] active steps—such as, creating and disseminating the [] Accused Products, and  
 20 product manuals, instructions, promotional and marketing materials, and/or technical materials to  
 21 distributors, resellers, and end users.” Dkt. No. 20 at pp. 8-9, 18 (Am. Compl. ¶¶ 28, 126). This  
 22 allegation describes only common and generic marketing materials that all technology  
 23 manufacturers provide for their products and has no specific link to HTC or the Patents-in-Suit.

24 *See Memory Integrity, LLC v. Intel Corp.*, 144 F. Supp. 3d 1185, 1193 (D. Or. 2015)  
 25 (“[O]rdinary acts incident to product distribution, such as offering customers technical support or  
 26 product updates, will not support inducement liability in themselves.”) (quoting *Metro-Goldwyn-*  
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1 *Mayer Studios Inc. v. Grokster, Ltd.*, 545 U.S. 913, 937 (2005) (internal quotations omitted);  
 2 *Chan v. AT&T Mobility LLC*, No. C11-1766-JLR, slip op. at \*2, 10 (W.D. Wash. Jul. 18, 2012)  
 3 (dismissing induced infringement claim where plaintiff alleged that defendant was “actively  
 4 inducing direct infringement by vendors, distributors, retailers, and end-users who sell, offer for  
 5 sale, purchase, and/or use the [a]ccused [d]evice”). CyWee provides no facts showing how any  
 6 of these materials are related to any acts that allegedly constitute patent infringement.  
 7 *Kremerma*, 2017 U.S. Dist. Lexis 145960 at \*4-5 (dismissing induced infringement claim  
 8 because plaintiff “failed to allege who was induced to infringe, how they infringed, and how  
 9 defendants had knowledge that the induced acts occurred and that they constituted patent  
 10 infringement”).

11 As to the second element of induced infringement, CyWee’s Amended Complaint  
 12 provides no facts to show that Defendants had “specific intent” to induce infringing acts by  
 13 others. Courts in this Circuit routinely dismiss inducement claims where plaintiffs fail to allege  
 14 facts plausibly showing intent to induce customer infringement or knowledge of customer  
 15 infringement. *See Kremerman*, 2017 U.S. Dist. LEXIS 145960 at \*7-8 (dismissing induced  
 16 infringement claim because “[Plaintiff] has pleaded no facts from which it may be reasonably  
 17 inferred that Defendants specifically intended to induce their customers or anyone else to  
 18 infringe his Patents”); *Fortinet, Inc. v. FireEye, Inc.*, No. 13-cv-02496-EJD, 2014 U.S. Dist.  
 19 LEXIS 139762, at \*12 (N.D. Cal. Sept. 30, 2014) (dismissing inducement claim based on “bare  
 20 allegations” that “Defendant’s products sold directly to consumers and through its distribution  
 21 partners are designed to be used (and are used by consumers and end-users) in an infringing  
 22 manner”); *Logic Devices, Inc v. Apple, Inc.*, No. C13-02943-WHA, 2014 U.S. Dist. LEXIS  
 23 3157, at \*4 (N.D. Cal. Jan. 7, 2014) (dismissing inducement claim where allegations “fail[ed] to  
 24 support an inference of specific intent to induce infringement and knowledge that the induced  
 25 actions constituted infringement”); *Avocet Sports Tech., Inc. v. Garmin Int’l, Inc.*, No. C 11-  
 26 04049, 2012 U.S. Dist. LEXIS 51650, at \*16-17 (N.D. Cal. Mar. 22, 2012) (dismissing induced  
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1 infringement claim because “Plaintiff has not alleged any facts to suggest that Defendants . . .  
 2 had the specific intent to induce infringement”); *Eagle Harbor Holdings LLC v. Ford Motor Co.*,  
 3 No. C11-5503BHS, 2012 U.S. Dist. LEXIS 14804 at \*4-5 (W.D. Wash. Feb. 7, 2012)  
 4 (dismissing induced infringement claim because “Plaintiffs have not alleged facts to support the  
 5 necessary elements of this claim such as [defendant’s] knowledge of the patents or a specific  
 6 intent to induce infringement); *Fujitsu Ltd. v. Belkin Int’l, Inc.*, 782 F. Supp. 2d 868, 892-93  
 7 (N.D. Cal. 2011) (granting motion to dismiss induced infringement claim for failure to allege  
 8 facts pertaining to specific intent). Even if the Court were to infer from CyWee’s Amended  
 9 Complaint’s allegations that HTC had knowledge of *possible* infringement by its end users –  
 10 which, HTC submits, it cannot – this is not sufficient to state a claim for induced infringement.  
 11 *See Warner-Lambert*, 316 F.3d at 1364 (knowledge of possible infringement by others is not  
 12 inducement).

13 As to the third element of induced infringement, CyWee alleges no facts showing how  
 14 any third party’s “use” constitutes infringement of the Patents-in-Suit. CyWee’s Amended  
 15 Complaint only alleges that “HTC indirectly infringes the [Patents-in-Suit] by inducing others to  
 16 infringe one or more claims of the [Patents-in-Suit] through sale and/or use of the [] Accused  
 17 Products” and that HTC “is aware that its actions with regards to distributors, resellers, and/or  
 18 end users of the [] Accused Products would induce infringement.” Dkt. No. 20 at pp. 8-9, 18  
 19 (Am. Compl. ¶¶ 28, 126). However, there are no facts showing how any actual “sale” or “use”  
 20 by any third parties constitutes infringement.

21 Because CyWee failed to allege facts sufficient under *Iqbal* and *Twombly* that show the  
 22 necessary elements for induced infringement, CyWee’s improperly plead induced infringement  
 23 claims should be dismissed.

24 **V. CONCLUSION**

25 For the reasons set forth above, CyWee’s claim for induced patent infringement should  
 26 be dismissed under Rule 12(b)(6) for failure to state claim upon which relief can be granted.  
 27

1 Dated: October 26, 2017

Respectfully submitted,

2 s/ Gregory L. Watts

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15 *HTC Corporation and HTC America, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 26, 2017, I filed the foregoing with the Clerk of the Court using the CM/ECF system, and served all parties via ECF.

Dated: October 26, 2017

s/ Gregory L. Watts  
Gregory L. Watts